

June 23, 2006

Civil Division-Kent County (739-7641)

Ms. Jean Bauer  
75 Vining Run  
Camden, DE 19934

Re: **Freedom of Information Act Complaint  
Against Town of Camden**

Dear Ms. Bauer:

Our Office received a Freedom of Information Act ("FOIA") complaint dated April 21, 2006 from you and eight other Camden Citizens for Better Government.<sup>1</sup> The complaint alleges that the Town of Camden ("the Town") violated FOIA on numerous specific occasions by denying access to public records. You also question the general practices of the Town in responding to FOIA requests claiming that "Citizens are inhibited in their search for information from the Town of Camden, as access is regulated and constrained."<sup>2</sup>

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<sup>1</sup> The other citizens who signed the FOIA complaint are: James DeGrangesco; William McPhail; Robert Bauer; Enrico LePore; Charles M. Hughes; Maria Ruffin; Jeanine Kleimo; and Sue LePore.

<sup>2</sup> You also allege that the Town does not promptly prepare municipal audits. According to your complaint, "[t]he Town of Camden's last fiscal year ended June 30, 2005; but the records were not provided to the town's auditor until mid-January 2006. This makes it impossible for citizens to access information regarding the town's financial position." That issue is not within our jurisdiction under FOIA.

By letter dated May 9, 2006, we asked the Town to respond to your complaint within ten days. We granted the Town's request for a brief extension of time because of the Town Solicitor's trial schedule and the Memorial Day holiday. We received the Council's response on June 1, 2006.

We will address each of your specific allegations and then discuss your general concerns about the Town's FOIA practices.

1. Minutes of Town Planning Commission

You allege that the "Camden-Wyoming Sewer and Water Authority submitted a FOIA request to the Town of Camden in November 2005, requesting copies of the minutes of the town's Planning Commission at which approval was granted for two specific properties to be annexed to the town. To date, no response has been granted."

The Town responds that it does not have any knowledge of such a request by the Sewer and Water Authority. Aside from your standing to raise this issue,<sup>3</sup> the Town provided us with a memorandum dated May 12, 2006 prepared by the Town's Operations Manager stating: "I contacted Harold Scott SR, Camden Wyoming Water and Sewer Superintendent . . . Mr. Scott informed me . . . that he could find nothing in his records that indicate such a FOIA request had been submitted." Without any contrary evidence in the record, we determine that the Town did not violate FOIA by denying access to minutes of the Town Planning Commission.

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<sup>3</sup> FOIA provides that "[a]ny citizen denied access to public records as provided in this chapter may bring suit within 60 days of such denial." 29 *Del. C.* §10005(b). None of the Camden Citizens for Better Government made a FOIA request for the Town Planning Commission minutes so you would not have standing to sue under FOIA.

2. Residential Building Permits

You allege that "[o]n January 27, 2006, a candidate for the office of Mayor [Jeanine Kleimo] submitted a FOIA request in writing and in person in the town hall. The request was for information regarding the number of residential building permits in 2005. To date, this request has never received a response."

According to the Town, the former Town Manager (George Dickerson) provided the building information to Ms. Kleimo by telephone. The Town recognizes that residential building permits are public records and represents that it will make them available to anyone who asks. We determine that the Town has not denied access to information regarding residential building permits in violation of FOIA.

3. Publication Costs

You allege that "on January 27, 2006, a resident [Alejandro Gomez] submitted a FOIA request for details regarding the cost of a publication mailed to all residents of the town. . . . Two weeks later, the response received noted that the 'only documents found' related to postage and to a bill from Staples that appeared to be for envelopes."

The Town provided us with a copy of a Public Record Access form filled out by Mr. Gomez on January 27, 2006. Among the information he requested was "cost of sending reports – that includes envelopes, printing, labor costs, photography, man-hours spent approving & mailing town report." The Town also provided us with a copy of a letter dated February 2, 2006 from the Town Solicitor to Mr. Gomez, which stated: "The only documents that exist and that are responsive to this request are attached hereto. Specifically, the documents show postage expenses for the Town for January 2006 along with expenditures at Staples that were incurred on 1/17/06." The attachments

to the Town Solicitor's letter itemize, among other things, postage paid by the Town (Pitney Bowes) and mailing supplies purchased (Staples). We accept the representation of the Town Solicitor that these are the only records responsive to Mr. Gomez's FOIA request. "It has been our historical practice to accept such representations from an attorney for 'the custodian of public records to determine that such documents do not exist for purposes of FOIA.'" *Att'y Gen. Op.* 05-IB19 (Aug. 1, 2005) (quoting *Att'y Gen. Op.* 97-IB01 (Jan. 14, 1997)). We determine that the Town did not deny access to public records requested by Mr. Gomez.

4. Business Licenses

You allege that "[a] phone call to the town hall on January 30, 2006 to request information on business licenses was never returned. The person calling asked if a FOIA request was needed and was advised to leave a voice mail message instead."

According to Town officials, they do not recall receiving a FOIA request regarding business licenses around that time. Based on this limited record, we cannot determine that a FOIA violation occurred.

5. Mayor's Compensation

You allege that "[o]n January 30, the same candidate [Jeanine Kleimo] for the office of Mayor called the Town Hall" to request "the amount of compensation provided to the Mayor." You acknowledge that a Department of Elections "official called the town and was provided with the information and relayed it to the candidate." Based on this record, we determine that the Town did not violate FOIA by denying access to public records about the amount of compensation paid to the

Mayor.<sup>4</sup>

6. Sign Ordinance

You allege that "[a]nother citizen called the town hall regarding information about the town's sign ordinance" but had to wait "two weeks, and only obtained the one-page ordinance when she phoned again and informed the town hall staff that she would arrive to pick it up later that day."

The Town provided us with a copy of a Public Record Access Form dated February 1, 2006 from Ms. Marie Ackerman asking for "the requirements for signs in homeowners yards & public places." The Town also provided us with a copy of a letter dated February 13, 2006 from the Town Operations Manager to Ms. Ackerman responding to her FOIA request and attaching the "signage guidance utilized during the election process."

"Delaware's FOIA is silent on how quickly a public body must respond to a public records request, other than to require 'reasonable access.'" *Att'y Gen. Op.* 03-IB26 (Nov. 13, 2003). Our Office has adopted a ten-day "rule of thumb," which may be extended for practical reasons. "The normal ten-day guideline is at most a 'safe harbor' meaning that a custodian who complies with a records request within ten days is presumptively acting without unreasonable delay." *Att'y Gen. Op.* 03-IB13 (June 2, 2003) (ten-day safe harbor does not include Saturdays, Sundays, and legal holidays).

Ms. Ackerman made her FOIA request on February 1, 2006. The Town provided her with the requested information on February 13, 2006. The Town responded to the request in nine days

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<sup>4</sup> We note that the Town provided us with a copy of a Public Record Access Form filled out by Ms. Marie Ackerman on February 1, 2006 requesting "the yearly salary of the Mayor of Camden." By letter dated February 9, 2006, the Town Operations Manager responded: "The Mayor of Camden's salary is zero dollars. This is a non salaried position."

(excluding the two intervening weekends), within the ten-day "safe harbor" which our Office has determined is reasonable under FOIA. Our Office encourages public bodies, whenever possible, to make public records available in less than ten days, but we cannot say that the Town denied reasonable access to Ms. Ackerman by responding to her request in nine days.

We now address your concerns about the Town's general FOIA practices.

A. Written Request

You question whether, under FOIA, a public body can require a "written, in-person FOIA request" to obtain information.

FOIA is "silent as to whether a public body can require a citizen to make a written request to inspect and copy public records before honoring the request." *Att'y Gen. Op.* 97-IB14 (July 29, 1997). But "if a public body chooses to require that the request be made in writing, . . . then that, in itself, does not amount to a violation of the public records law." *Id.* It may be a sound business practice to require all FOIA requests and responses to be in writing in order to create a record of who requested what information when and the public body's response.

You complain that "[l]etters or other forms of communication are not considered FOIA requests and, therefore, Town of Camden staff and officials believe that there is no obligation to respond to them." We understand that in January 2006 the Town implemented new procedures for responding to requests for information using a "Public Records Access Form" to be completed by the requestor identifying the information requested. It appears there have been some period of transition when the Town, on occasion, might not have responded to letters or phone calls from citizens who did not fill out the new Public Records Access Form. Our Office has reviewed the forms completed and responses by the Town since the end of January 2006, and we are satisfied that

citizens (including members of your group) are aware of the new procedures and using them without incident.

B. Ordinances

You allege that "Town ordinances are not freely available; indeed, one must submit a FOIA request to look at one."

According to the Town, municipal ordinances are bound in volumes available to the public for inspection and copying at the Town Hall during regular business hours, and for citizens with access to the Internet those ordinances are posted on the Town's website. If a citizen wishes instead to receive a copy of an ordinance by mail, we do not think it is unreasonable for a public body to require a written FOIA request.

C. Minutes

You allege that you "hear – but cannot verify – that separate, more detailed minutes of town council meetings are provided to the Mayor and Council compared with minutes distributed to the public." The Town denies that it prepares two sets of minutes. Absent some evidence in the record, we cannot determine that the Town violated FOIA by not making publicly available minutes of Town Council meetings provided to the Mayor and Council.

One of the important purposes of FOIA is to give citizens "easy access to public records in order that the society remain free and democratic." 29 Del. C. §10001. A public body cannot set up arbitrary roadblocks to frustrate citizens when they request information in order to hold their government accountable. We do not find any evidence in the record of a pattern or practice by the Town to deny easy access to public records. As for a few FOIA requests, there may have been some miscommunication and misunderstanding. We trust that the new FOIA procedures the Town

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has implemented will resolve any such issues, but we have advised the Town that FOIA requires it to publish a written FOIA policy to make it clear to all citizens how the procedures work. *See 29 Del. C. §10003(b)* ("It shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records.").



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**CONCLUSION**

For the foregoing reasons, we determine that the Town has not violated the public records requirements of FOIA as alleged in your complaint.

Very truly yours,

W. Michael Tupman  
Deputy Attorney General

APPROVED:

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Lawrence W. Lewis, Esquire  
State Solicitor

cc: The Honorable Carl C. Danberg  
Attorney General

Malcolm S. Cobin, Esquire  
Chief Deputy Attorney General

Keith R. Brady, Esquire  
Assistant State Solicitor

Craig T. Eliassen, Esquire  
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Opinion Coordinator

Mr. James DeGranesco  
Mr. William McPhail  
Mr. Enrico LePore  
Mr. Robert Bauer  
Mr. Charles M. Hughes  
Ms. Maria Ruffin  
Ms. Jeanine Kleimo  
Ms. Sue LePore  
Co-Complainants